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September 29, 1997

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

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SEP 29 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Reply Comments submitted by  
the Telecommunications Resellers Association  
CC Docket No. 94-129

Dear Mr. Caton:

Pursuant to Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration, CC Docket No. 94-129, FCC 97-248, released July 15, 1997, transmitted herewith, on behalf of the Telecommunications Resellers Association ("TRA"), is a diskette containing TRA's Reply Comments submitted today in the above referenced matter. Also enclosed are an original and eleven copies of TRA's Comments.

If you should have any questions concerning this matter, please do not hesitate to contact me at (202)293-2590.

Respectfully submitted,

*Catherine M. Hannan*

Catherine M. Hannan

Enclosure

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ORIGINAL

## Before the

## Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers

**CC Docket No. 94-129**

## REPLY COMMENTS OF

# TELECOMMUNICATIONS RESELLERS ASSOCIATION

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## **SUMMARY**

The Telecommunications Resellers Association, a national trade association representing more than 500 entities engaged in, or providing products and services in support of, telecommunications resale, urges the Commission that the effective implementation of Section 258 of the Telecommunications Act of 1996 calls for the announcement of a policy decision requiring consumers to pay no more for telecommunications services provided by a carrier which cannot adequately document a PC switch than would have been owed the authorized carrier for those same services, but not the total absolution of consumers for all charges. The Commission should also adopt its proposal of expanding existing verification rules to apply to all carriers and all telecommunications services and further make those verification rules applicable to both PC changes and PC freezes.

TRA also urges the Commission to summarily reject the sanction/penalty proposals advanced by Ameritech, Southwestern Bell and U S West as violative of the due process rights of carriers. The above-described expansion of the existing verification rules will increase the effectiveness of the Commission's existing safeguard procedures and, coupled with the appointment of an unaffiliated, independent PC Administrator to monitor carrier compliance with those rules and the timely, competitively neutral implementation of PC changes and freezes, will render unnecessary any further modification of the Commission's enforcement procedures.

The Commission should also adopt a bright-line which does not unduly hamper resale carriers in the pursuit of legitimate business objectives by requiring repetitive and frequently confusing identification of underlying facilities-based providers; specifically, the Commission should require end-user notification only where the resale carrier has made a clear public commitment not to change underlying providers.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**In The Matter of**

**Implementation of the Subscriber Carrier  
Selection Changes Provisions of the  
Telecommunications Act of 1996**

**Policies and Rules Concerning  
Unauthorized Changes of Consumers'  
Long Distance Carriers**

**CC Docket No. 94-129**

**REPLY COMMENTS OF  
THE TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"),<sup>1</sup> through undersigned counsel and pursuant to Public Notice DA 97-1746, released August 15, 1997, hereby replies to comments submitted in response to the *Further Notice of Proposed Rulemaking*, FCC 97-248, released July 15, 1997, in the above captioned docket ("*Notice*").

TRA urges the Commission to refrain from relieving consumers from all obligation to pay for telecommunications services actually used by them. While TRA wholeheartedly agrees that a consumer should never be required to pay more than the amount the authorized carrier

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<sup>1</sup> TRA, an association of more than 500 resale carriers and their underlying product and service vendors, was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services. Although initially engaged almost exclusively in the provision of interexchange telecommunications services, TRA's resale carrier members have aggressively entered new markets and are now actively reselling international, wireless, enhanced and internet services. TRA's resale carrier members are also among the many new market entrants that are or will soon be offering local exchange and/or exchange access services.

would have charged for the services rendered, further expansion of the protections afforded by Section 258 could produce unintended adverse consequences. Since the unauthorized carrier is already precluded from retaining payment for the telecommunications services rendered, the deterrent effect of Section 258 would not be strengthened by a forgiveness of charges to consumers. Such a policy could, however, encourage consumers to fraudulently seek to avoid paying charges rightfully owed.

TRA also urges the Commission (i) to extend existing verification rules to apply to both PC changes and PC freezes, (ii) to require execution of PC changes within a specific period of time after notification of the change to the executing carrier, and (iii) to appoint a neutral, independent administrator to oversee verification rule compliance and prompt, competitively neutral implementation of PC changes and PC freezes. In so doing, the Commission would increase the effectiveness of its existing slamming safeguards without engendering any of the due process dangers which would flow from the modification proposals advocated by Ameritech, Southwestern Bell and U S West. Because of their serious procedural flaws, the Commission should reject these proposals outright.

Finally, TRA remains concerned that an obligation to provide repeated identification of underlying carriers will significantly undermine the competitive identity of resale carriers. TRA therefore urges the Commission to make clear that a mere identification of the underlying carrier in advertisements, promotions, telemarketing or routine correspondence does not constitute the "clear public commitment" not to change underlying providers necessary to impose a notification requirement upon resale carriers.

## **I. INTRODUCTION**

Congress enacted Section 258 to promote the ultimate goal that consumers retain the ability to freely designate, and redesignate at will, telecommunications carriers of their own choosing. In so doing, Congress made a reasoned judgment that the appropriate means of deterring slamming would be the removal of all economic incentive for carriers to engage in this exploitative practice. Section 258 has been carefully fashioned to advance this goal without also creating undue risks to the development and advancement of competition which would necessarily affect all telecommunications markets. By mandating that consumer payments for telecommunications services must be remitted to the authorized carrier in instances where the new carrier cannot document a valid PC switch, Congress has eliminated the possibility that its antislamming measures could become a vehicle which consumers could seize upon in order to avoid paying for charges legitimately owed for telecommunications services rendered. This is precisely the result which the Commission would be sanctioning should it accede to the requests of certain commenters that consumers be absolved from the obligation to pay for telecommunications services actually utilized. Such a policy would be inconsistent with the intent of Congress as expressed in Section 258, and would also conflict with existing Commission policy concerning consumer liability for telecommunications charges following an unauthorized or undocumentable PC switch. TRA thus urges the Commission to protect the economic interests of consumers by ensuring that they never pay more for telecommunications services than would have been owed the original carrier for the same services but to refrain from relieving consumers of the obligation to pay for services actually used by them.

TRA also urges the Commission to reject the wholesale overhaul of its existing enforcement procedures proposed by Ameritech, Southwestern Bell and U S West. These so-

called "safeguard" procedures would necessarily require a tremendous amount of Commission oversight and involvement, as well as considerable administrative expense. And inconsistent with the dictates of due process, the procedures advocated would impose liability, including monetary fines and sanctions which would unduly hamper the ability of accused carriers to carry on day-to-day business activities, without providing any meaningful opportunity for accused carriers to document a valid PC switch. All three carriers propose to levy monetary fines and other sanctions upon competing carriers based upon the mere reporting of allegations of wrongdoing, passed along to the Commission by the incumbent LECs which frequently will be the direct competitors of such carriers.

A far more simple -- and clearly more equitable -- means of deterring carrier abuses of the PC change and PC freeze process would be the extension of the Commission's existing verification rules to both PC changes and PC freezes. By coupling this extension of existing rules with the establishment of an independent administrator, tasked with the timely and competitively neutral implementation of PC changes and PC freezes, the Commission would significantly limit the ability of all carriers, including the incumbent LECs which stand to gain the most by positioning themselves as the reporters of unsubstantiated slamming allegations levied against competing carriers, to manipulate the PC switch and/or PC freeze process.

Finally, inasmuch as the identity of the underlying facilities-based carrier will only rarely be a matter of substantial concern to the resale carrier's end user, TRA asks the Commission to require notification of changes in underlying carrier only where a resale carrier has made a clear public commitment not to change its network provider (a standard not satisfied by simple identification of the facilities-based provider in advertisements, promotions or telemarketing activities) or where the underlying provider has recently been identified, with more than

commensurate emphasis than the remainder of the materials presented, in correspondence to the end user.

## **II. ARGUMENT**

### **A. Section 258 Should Not be Used as a Mechanism to Relieve Consumers of the Obligation to Pay for Telecommunications Services Actually Used By Them.**

Addressing consumer liability of interexchange carrier charges, the Commission has indicated that "the FCC's policies protect consumers who receive higher bills as a result of being slammed. These consumers are required to pay only the toll charges they would have paid to their original long distance carrier."<sup>2</sup> Despite the Commission's reasoned policy decision, which applies with equal force to all telecommunications markets, numerous parties continue to urge the Commission to read into the text of Section 258 an absolution of consumers from the obligation to pay for telecommunications services.<sup>3</sup> TRA understands the desire of these commenters to ensure that the consumer, a blameless party in the slamming triangle, is protected from economic harm. TRA disagrees, however, that absolution from all charges is the appropriate means of providing such assurances.

Protecting consumers is, and must remain, the primary goal of Section 258. Slamming is a particularly egregious practice first and foremost because it takes away choices which rightfully belong to the consumer; slamming is also harmful, however, because telecommunications providers are forced to incur economic and competitive losses as a result of

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<sup>2</sup> Common Carrier Bureau, Enforcement and Industry Analysis Division, "Common Carrier Scorecard", p. 4 (Fall 1996).

<sup>3</sup> Comments of North Carolina Public Staff Utilities Commission, p. 7; Comments of Ohio Consumers Council, p. 4; Comments of Pennsylvania Office of Consumer Advocate, p. 7; Comments of Illinois Commerce Commission, p. 5.

what is essentially the theft of valued customers without the customers' consent or even their knowledge. The loss of a relatively limited number of customers through slamming may perhaps go unnoticed by a large carrier. To small carriers such as the majority of TRA's membership, however, the loss of even a small number of customers to slamming is quite noticeable, directly affecting the carrier's profitability and thus, its continuing ability to provide a competitive telecommunications alternative to consumers.

Congress has taken care to pursue its first goal, protecting the ability of consumers to freely exercise telecommunications choices, in the manner least likely to do harm to its secondary goal, protecting the legitimate business objectives of telecommunications carriers. Specifically, Congress has adopted as the appropriate means of advancing both goals the removal from carriers of any economic incentive to engage in slamming by requiring the transfer to the authorized carrier of any monies received in exchange for the services which the consumer has authorized but which have been provided by a carrier different from the carrier expressly authorized by the consumer.

Without question, Congress could have chosen to absolve consumers of liability for all charges for services rendered by an unauthorized carrier. Such a decision would have accomplished the removal of all economic incentive for the unauthorized carrier to slam, but it would also have created an incentive for consumers to fabricate claims of having been slammed in order to avoid paying legitimate telecommunications services charges. Thus, although no additional benefits would be gained by deviating from the structure adopted by Congress -- which provides not for forgiveness of charges but rather, the remittance of payments to the authorized carrier -- an incentive would be created for consumers to seek unwarranted relief from legitimate

payment obligations to the detriment of all telecommunications carriers and ultimately, the vast majority of consumers who would take responsibility for satisfying their financial obligations.

Further, absolving consumers from paying for telecommunications services utilized by them would in no way mitigate the unauthorized carrier's damage to the legitimate business expectations of the authorized carrier or alleviate the harm which the authorized carrier would suffer in the marketplace. Thus, while an absolved consumer would benefit in the short-term, the authorized carrier, and all consumers who rely upon or who might have chosen to rely upon that carrier in the future, will bear the costs associated with those short-term benefits. The balance struck by Congress is appropriate and should be maintained. Pursuant to Section 258, the economic disadvantage associated with slamming is currently visited solely upon the unauthorized carrier. The consumer is not harmed economically by an obligation to pay only the amount which the authorized carrier would have been entitled to recover, and the business interests of the authorized carrier, including the ability to continue providing a competitive service choice to all consumers, are not compromised.

**B. Modifying Existing Enforcement Processes In the Manner Urged by RBOC Commenters Would Eliminate Procedural Safeguards Essential to Due Process.**

The Commission should refuse to sanction enforcement measures which would effectively impose liability upon a carrier based upon a mere allegation of wrongdoing. This is in essence what Ameritech, Southwestern Bell and U S West request, going so far as to volunteer incumbent LECs to fill the combined role of watchdog and prosecutor of allegations against competing carriers. The Commission currently has in effect safeguards which have been adopted specifically to address and eliminate the ability of unscrupulous carriers to engage in the unauthorized switching of consumers' primary interexchange carriers. In fulfilling its adjudicative

obligations, the Commission has demonstrated an unflagging commitment to enforcing its slamming rules, monitoring and processing both informal and formal complaints on a streamlined basis,<sup>4</sup> and imposing fines upon carriers violating the Commission's rules, with recent fines ranging from \$30,000 to \$500,000.<sup>5</sup> These existing processes incorporate essential procedural safeguards which the proposals of these Regional Bell Operating Companies ("RBOCs") calling for the drastic overhaul of the Commission's existing enforcement procedures do not. The fines imposed by the Commission for violation or willful disregard of its rules represent the end result of an investigative process during which the carrier is provided every reasonable opportunity to demonstrate its compliance with those rules. In stark contrast, the rapid-fire sanctions advocated by Southwestern Bell, Ameritech and U S West, each of which would be administratively burdensome to implement and sustain, provide precious little opportunity for accused carriers to vindicate themselves prior to the imposition of fines or other sanctions. Indeed, Southwestern Bell does not even acknowledge the need for an adjudicatory process to determine whether a carrier has indeed violated the Commission's rules prior to imposition of sanctions and fines.

Ameritech's streamlined sanctions proposal is premised upon the collection by the incumbent LEC of a running tally of the "number of complaints lodged"<sup>6</sup> against each carrier submitting PC change requests, followed by the submission of quarterly reports to the Commission indicating the number of PC change orders submitted by each carrier and the number disputed by end users. Whenever a particular carrier's "complaints lodged" ratio exceeds a certain percentage of the total PC change orders submitted, that carrier would be subject to

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<sup>4</sup> Common Carrier Scorecard, p. 10.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> Comments of Ameritech, p. 12.

"automatically triggered safeguards"<sup>7</sup> which would include obligations to perform multiple verifications of every PC change, the recording of all telephone conversations between subscribers and third party verifiers, and the engagement by the carrier of an independent marketing research firm to place "test" calls to evaluate the carrier's compliance with elevated verification procedures.<sup>8</sup> From there, Ameritech's proposed sanctions escalate to requiring the manual processing of the carrier's PC changes (resulting in an unavoidable delay in implementation of PC changes for that carrier's customers) with the increased costs associated with such manual processing being borne by the carrier which the incumbent LEC in its sole discretion has identified as a potential slammer,<sup>9</sup> and the imposition of "stiffer penalties in enforcement proceedings".<sup>10</sup>

While Ameritech at least acknowledges that a proceeding to determine the validity of slamming allegations would eventually occur, the "automatically triggered safeguards" would become effective upon the reporting of slamming allegations by the incumbent LEC. TRA strongly disagrees with Ameritech's assessment that the imposition of sanctions "based on unadjudicated consumer complaints would not violate the due process rights of carriers."<sup>11</sup> Incumbent LECs possess a vested interest not only in retaining customers for themselves and their affiliates, but also in taking advantage of every opportunity presented to disadvantage competing carriers. Ameritech's guileless and completely unsupported assertion that "[b]ecause,

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<sup>7</sup> *Id.*, p. 13.

<sup>8</sup> *Id.*, pp. 11-12.

<sup>9</sup> *Id.*, pp. 12-13 and fn. 11.

<sup>10</sup> *Id.*, p. 13.

<sup>11</sup> *Id.*

as noted above, consumers who are slammed are far more likely to complain to their LEC than file a complaint at the FCC, the number of *complaints* received by LECs would be a better gauge of *actual slamming* levels"<sup>12</sup> should indicate clearly to the Commission that Ameritech at least perceives little difference between bare accusation and demonstrated evidence of wrongdoing. The Commission should categorically refuse to extend what is essentially prosecutorial authority to carriers like Ameritech who will be all too eager to equate mere allegations with actual guilt where doing so will allow them to significantly disadvantage their competitors.

Southwestern Bell's "three-strikes-and-you're-out" proposal is equally damaging to the principles of due process. Like Ameritech's "safeguards" proposal, Southwestern Bell also links imposition of sanctions to receipt of a certain percentage of PC change order disputes during any given month. Positing that "establishing a 2% threshold could eliminate approximately 75% of all slamming activity",<sup>13</sup> Southwestern Bell seeks to impose a "probationary status" period, not to exceed six months in duration, during which carriers whose PC change disputes exceed this benchmark would not only be subject to additional internal training requirements, they would also incur a fine of "no less than \$5,000 per slamming occurrence during the probationary period."<sup>14</sup> In a particularly nebulous passage, Southwestern Bell suggests that "[t]he fine will be remitted to the appropriate regulatory agency."<sup>15</sup> TRA will assume that within the scope of this proceeding Southwestern Bell intends the Federal

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<sup>12</sup> *Id.*, fn. 10. (*emphasis added*)

<sup>13</sup> Comments of Southwestern Bell, fn. 1.

<sup>14</sup> *Id.*, p. 5.

<sup>15</sup> *Id.*

Communications Commission, rather than a particular state or local authority, to be the "appropriate regulatory agency".

Southwestern Bell appears to contemplate an increase in fines for subsequent "slamming occurrences." Unfortunately, an in-depth analysis of the proposal is precluded by Southwestern Bell's internally inconsistent descriptions of when "Strike 1, Strike 2 and Strike 3" will occur, precisely what sanctions will apply to each segment and how (and by whom) those sanctions will be administered. TRA notes, however, that Southwestern Bell nowhere makes even a passing reference to a formal adjudicatory process pursuant to which the accused carrier might confront and disprove evidence of the so-called "slamming occurrence" before a body authorized to reach a dispositive conclusion. TRA will not go so far as to assume that Southwestern Bell envisions itself the prosecutor, judge and jury for purposes of determining the validity of "slamming occurrences", since adoption of such a posture would implicate serious due process concerns which Southwestern Bell surely could not have intended. With so many issues left unresolved it is clear that, at a minimum, the Commission would need to devote an inordinate amount of time and resources to thrashing out the outstanding details of Southwestern Bell's preliminary proposal.

Finally, TRA notes that U S West, which virtually alone among the commenters clings to the notion that slamming is a phenomenon which occurs only within the long distance industry, also advocates the imposition of swifter and more substantial fines based upon the number of slamming *complaints* received by a carrier rather than linking sanctions to demonstrated evidence of slamming. A slight difference between U S West's proposal and those of Ameritech and Southwestern Bell is U S West's acknowledgement that these increased fines must flow from the Commission. U S West envisions a scheduled quarterly NAL process

pursuant to which "the fine/forfeiture amount calculated according to the . . . schedules" propounded by U S West, which would still be based upon slamming *allegations* rather than clear evidence of violation of the Commission's rules, would be imposed.<sup>16</sup> U S West would place the quarterly reporting burden upon IXC's to document the number of customers signed up and the number of complaints received since "IXC's routinely get reports from local exchange carriers ("LEC") that advise them of information about complaints associated with unauthorized conversions."<sup>17</sup> The most egregious element in U S West's proposal, however, and the one most ripe for anticompetitive abuse, is its request that the Commission "grant authority to Executing Carriers to impose on carriers . . . verification methods more limited than the Commission's general verification options"<sup>18</sup> including allowing executing carriers to require carriers to provide "either a submitted written LOA or a third-party verification approved by the Executing Carrier for each new customer".<sup>19</sup>

Inasmuch as the Commission's existing enforcement processes continue to function efficiently and in a straightforward manner consistent with the dictates of due process, an inordinate investment of time and effort to fix a process which currently functions efficiently and effectively would be counterproductive. TRA does agree that in the best of all possible circumstances the Commission, if possessed of unlimited time and resources, might modify its existing enforcement procedures in a manner which would exert an even greater deterrent to the slamming activities of those few carriers hopelessly committed to stealing, rather than winning,

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<sup>16</sup> Comments of U S West, pp. 19-20.

<sup>17</sup> *Id.*, fn. 36.

<sup>18</sup> *Id.*, p. 20.

<sup>19</sup> *Id.* (*emphasis in original*)

customers. Even if the Commission were equipped with unlimited personnel resources which could be devoted to a significantly elevated level of slamming enforcement activities, however, it would not adopt procedures such as those proposed by Ameritech, Southwestern Bell and U S West which are so noticeably lacking in procedural safeguards as to endanger the ability of a decisionmaker to reach an impartial determination, or so openly inviting to abuse by executing carriers. Neither would the Commission allow implementation of a sanction structure pursuant to which incumbent LECs would possess the unchecked ability to compel Commission imposition of sanctions against their interexchange carrier (or other) competitors through the mere reporting of slamming allegations, substantiated or unsubstantiated.

In TRA's opinion, the Commission's existing safeguards could be rendered more effective quickly and with relative ease (i) by extending the Commission's existing verification rules to apply to all carriers and to both PC changes and PC freezes, and (ii) by establishing an independent PC Administrator responsible for monitoring compliance of both submitting and executing carriers,<sup>20</sup> documenting the timely execution of PC changes and PC freezes, receiving direct input from consumers, providing a centralized database pursuant to which consumers could quickly and easily verify the identify of their selected telecommunications carrier(s), and reporting requested information to the Commission as necessary to assist in the resolution of slamming disputes.

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<sup>20</sup> TRA finds creative but nonetheless erroneous GTE's belief that Congress intended to designate as executing carriers only "carriers that execute PC changes on their own behalf, rather than submitting such changes to another carrier for processing." (Comments of GTE, p. 6) The only logical definition of "executing carrier" is the one more succinctly expressed by Bell Atlantic and accepted by all commenters with the exception of GTE; namely, "the executing carrier will be the one that receives the PC change request from the submitting carrier and causes it to be implemented." (Comments of Bell Atlantic, p. 8)

**C. Establishment of an Independent Third Party Administrator Is Necessary In Order to Simultaneously Protect the Rights of Consumers and Foster the Growth of Competition.**

Incumbent LECs vigorously deny their ability to act anticompetitively in the implementation of PC changes or PC freezes,<sup>21</sup> even in the face of clear administrative determinations that they have engaged in just such anticompetitive behavior.<sup>22</sup> Some even go so far as to assert, however implausibly, that they are devoid of incentives to behave in such a manner. Ameritech boldly declares that "the history of slamming to date" compels the conclusion that it is the "small carriers -- the new entrants -- that are often the most egregious abusers of the PC change process."<sup>23</sup> This patently self-serving comment turns a blind eye to the fact that very few carriers -- large or small -- enter the local telecommunications market as facilities-based carriers. And even those who enter as "virtual facilities-based carriers" through the purchase of unbundled network elements continue to rely upon the incumbent LEC to implement PC changes. It also ignores the fact that until very recently, the history of slamming in the local market was nonexistent because local service alternatives were nonexistent. Tellingly, in the brief period of time since the passage of the Telecommunications Act of 1996<sup>24</sup> actions have been brought

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<sup>21</sup> Comments of Bell Atlantic, p. 7; Comments of U S West, Inc., p. 32; Comments of Southern New England Telephone Company, p. 8; Comments of Bellsouth Corporation, p. 10; Comments of GTE Service Corporation, p. 9.

<sup>22</sup> See *In the Matter of the Complaint of Sprint Communications Company, L.p. against Ameritech Michigan*, Case No. U-110138; *Sprint v. Illinois Bell Telephone Company*, No. 96-0084 (consolidated with *MCI et al. v. Illinois Bell Telephone Company*, No. 96-0075); *Sprint v. Ameritech Ohio*, Case No. 967-142-T-CSS; *Order Concerning Implementation of IntraLATA Presubscription by New York Telephone Company*, August 15, 1996.

<sup>23</sup> Comments of Ameritech, p. 17.

<sup>24</sup> Pub. L. No. 104-104, 110 Stat. 56 (the "1996 Act").

against Ameritech (hardly a small carrier) seeking to limit that carrier's anticompetitive actions in each of its in-region states.<sup>25</sup>

The primary objective of the 1996 Act, the advent of a "pro-competitive, de-regulatory national policy framework" which would serve as a solid foundation for the competitive offering of telecommunications services by established companies and new enterprises alike, including the opening of the monopoly local exchange/exchange access markets to competitive entry through the elimination of "not only statutory and regulatory impediments to competition, but economic and operational impediments as well"<sup>26</sup> cannot be realized if incumbent LECs are allowed to remain the unsupervised implementors of PC changes and PC freezes. To attain its objective of providing a means by which PC changes and freezes can be -- and will be -- implemented in a competitively neutral manner, the Commission must appoint an independent, unaffiliated PC Administrator.

As noted above, Ameritech, Southwestern Bell and U S West go to great lengths to enlist the Commission's assistance in the implementation of "safeguard" and "penalty" procedures, to be driven in large measure by the reporting functions which would either be voluntarily assumed by incumbent LECs or forcibly imposed upon competing carriers. The

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<sup>25</sup> This same carrier cites its obligation to provide OSS on a nondiscriminatory basis as a factor militating against its ability to inappropriately manipulate the PC change process. Industry consensus is that no RBOC is presently providing OSS at a level and of a quality sufficient to satisfy the dictates of Section 251, and the Commission has held specifically in its Order denying Ameritech's Section 271 Application for the State of Michigan that Ameritech cannot currently do so. *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan ("Memorandum Opinion and Order")*, CC Docket No. 97-137, FCC 97-298, ¶¶ 128 - 221 (August 19, 1997), *pet. for recon. pending*.

<sup>26</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499, ¶ 3 (1996), *pet. for review pending sub. nom. Iowa Utilities Board v. FCC*, Case No. 96-3221 and consol. cases (8th Cir. Sept. 5, 1996), *recon.* FCC 96-394 (Sept. 27, 1996), *further recon.* FCC 96-476 (Dec. 13, 1996), *further recon. pending* ("Local Competition First Report and Order").

ability to essentially prosecute mere allegations lodged against competitors, coupled with the imposition of heightened verification requirements and monetary and other sanctions upon those competitors, makes the procedures advanced by these commenters wholly inappropriate as enforcement mechanisms. Many of the suggestions advanced, however, including the maintenance by incumbent LECs of the number of PC change requests received from each carrier during a particular period of time, as well as information concerning the number of slamming complaints received and other pertinent information such as the time within which each PC change or freeze was executed (or thawed), would be extraordinarily helpful to an independent administrator tasked with the oversight of the PC change/PC freeze process.

TRA thus urges the Commission to require incumbent LECs to collect, organize and periodically forward such information to the PC Administrator to be appointed by the Commission. Inasmuch as Ameritech has identified a quarterly report as not unduly taxing to compile, TRA would support the quarterly forwarding of information. Ideally, however, a monthly report, mirroring the monthly incumbent LEC reporting interval proposed by Southwestern Bell, would be preferable. The New York State Department of Public Service has urged that "data verifying PC-freeze requests be maintained as long as the subscriber remains a customer of the carrier."<sup>27</sup> By mandating retention of PC change and PC freeze verification and implementation documentation by the PC Administrator, to be archived as necessary, the Commission would ensure the availability, on an on-going and perpetual basis, of the precise information necessary to the resolution of slamming allegations.

The Illinois Commerce Commission has urged the assignment of carrier identification codes ("CICs") to all carriers as a means to alleviate consumer confusion in

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<sup>27</sup> Comments of New York State Department of Public Service, p. 10.

identifying their carrier of record.<sup>28</sup> In light of the Commission's concerns regarding rapid depletion of existing CICs, it is unlikely that this proposal could be technologically implemented. A similar result could be achieved, however, by the establishment of a unique carrier identification code as part of a database to be maintained by the PC Administrator. TRA also supports the suggestion of the Vermont Public Service Board that consumers be afforded toll-free access to this "CIC-type" database in order to facilitate verification of the consumer's carrier(s) of record.<sup>29</sup>

Commenters have also asked the Commission to require execution of a PC change within a specific period of time, ranging from 3 to 5 days after the PC change request is received from a submitting carrier.<sup>30</sup> Adoption of such a rule, coupled with submission of execution time data to the PC Administrator, will provide the basis for a quantifiable compliance analysis and ensure that "the executing carrier . . . be required to process change requests from non-affiliated companies with the same level of service as change requests submitted by itself or its affiliated carriers."<sup>31</sup> The New York State Consumer Protection Board goes further and urges the Commission to require that an executing carrier may not process a PC change until it has verified that a freeze is not in place for the relevant service.<sup>32</sup> Should the Commission adopt this requirement, the existence of PC freeze records by the PC Administrator will allow executing carriers to obtain this information quickly and to head off allegations of intentional delay in

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<sup>28</sup> Comments of Illinois Commerce Commission, p. 5.

<sup>29</sup> Comments of Vermont Public Service Board, p. 11.

<sup>30</sup> Comments of Public Staff - North Carolina Utilities Commission, pp. 1, 3; Comments of MCI Telecommunications Corporation, p. 24; Comments of Texas Office of Public Utility Counsel, p. 2.

<sup>31</sup> Comments of Public Staff - North Carolina Utilities Commission, p. 4.

<sup>32</sup> Comments of New York State Consumer Protection Board, p. 13.

implementing requested PC changes. More importantly, by limiting the information provided to simply whether a PC freeze exists for a particular aspect of the customer's telecommunications services, the PC Administrator would limit the executing carrier's ability to obtain and perhaps misuse confidential information concerning the identity of the service provider or the specific services authorized by the consumer. It would also be unnecessary for the executing carrier to deal directly with the consumer, thus limiting the likelihood that the consumer will be subjected to a "hard-sell" pitch to remain with the present carrier.

Just as the Commission has established rules concerning the types of information which must be provided in an LOA, the Commission should also require carriers to provide specific information concerning the availability and effect of PC freezes to consumers as follows: information concerning the ability to implement separate PC freeze choices for local service only, long distance service only, or both; a clear explanation that implementing a PC freeze for local service may result in certain long distance calls (i.e., intraLATA toll calls) defaulting to the identified local carrier's long distance affiliate; detailed instructions on the procedure for implementing a PC freeze and correspondingly detailed information regarding canceling a PC freeze; an indication of the time required both to implement and remove a PC freeze; and notification that a change in local service providers will require the consumer to implement a new PC freeze in order to continue a previously established IXC PC freeze. The Commission should compel executing carriers to act upon unambiguous written instructions from a consumer, including removal of an existing PC freeze in order to implement the new instructions, when the authorizing document meets the above requirements. This prompt implementation requirement would have the added benefit of precluding executing carriers from requiring coordinated

conference calls or engaging in other tactics designed primarily to delay implementation of the consumer's choice.

**D. The Commission Should Require End-User Notification of Changes in Underlying Provider Only Where Resale Carriers Have Made a "Clear Public Commitment" Not to Change Providers.**

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As TRA has previously advised the Commission, requiring a resale carrier that has sought in the marketplace to establish its own identity and to "brand" its own products and services to notify its customers each time it changes its network provider directly undercuts the carrier's strategic objectives. Periodic and repeated identification of a resale carrier's network provider sends the clear message that the resale carrier is not the "real" provider of long distance service and may actually reinforce the brand recognition of the underlying facilities-based carrier to the resale carrier's competitive detriment. Whether the effect on the resale carrier's competitive credibility is large or small, it is adverse and contrary to the Commission's pro-competitive policies. Several commenters express concern that a lack of knowledge that a change of underlying provider has occurred may confuse consumers, and accordingly have asked the Commission to take action ranging from requiring carriers to identify underlying facilities-based providers whenever a change in provider occurs,<sup>33</sup> requiring notification of a change in underlying provider where the identity of the underlying carrier has induced a consumer to use the resellers services,<sup>34</sup> or requiring notification based upon a presumed reliance by the subscriber whenever

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<sup>33</sup> Comments of Cincinnati Bell Telephone, p. 5.

<sup>34</sup> Comments of Public Staff - North Carolina Utilities Commission, p. 7.

an underlying carrier has been mentioned in the resale carrier's marketing or promotional materials, including oral presentations.<sup>35</sup>

TRA agrees that when a customer has entered into an agreement to take the resellers services based upon the express understanding that a particular underlying carrier would provide those services, notification of a change in underlying provider is required. TRA cannot support, however, the contention of Cincinnati Bell that the identity of an underlying carrier must always be provided to customers. Not only would such a requirement cause significantly greater consumer confusion -- since very few resale carrier customers are even aware that the underlying telecommunications services may be provided via the physical network of a carrier different from their selected telecommunications carrier -- resale carriers will often be precluded from revealing the identity of an underlying carrier by the terms of their contractual commitments with that carrier.

Many more commenters support the adoption of the bright line test based upon reliance by the subscriber to statements by the resale carrier which have led the consumer to rely upon the continued provision of underlying service by the identified facilities-based carrier.<sup>36</sup> As previously stated, TRA would not object to the establishment of a rebuttable presumption of consumer reliance upon the identity of an underlying facilities-based carrier; provided, however, that the Commission makes clear that a single mention of the underlying carrier's identity (or even repeated references separated by large periods of time) should not be deemed to automatically trigger a consumer notification obligation since the totality of the circumstances

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<sup>35</sup> Comments of New York State Department of Public Service, p. 13.

<sup>36</sup> Comments of Illinois Commerce Commission, p. 7; Comments of MCI Telecommunications Corporation, p. 26; Comments of National Association of Attorneys General, p. 13.

would not reasonably indicate that the resale carrier is attempting to intentionally utilize the identity of the underlying facilities-based carrier as a means to inappropriately influence that customer to remain on the resale carrier's network. As TRA has suggested, the identification of a particular underlying service provider by the resale carrier in correspondence to the consumer within a certain specifically prescribed time period, for example, six months or 90 days, would be a reasonable standard for requiring the resale carrier to inform the consumer of the subsequent change in underlying service provider. The preferable solution, however, would be the adoption of a clear policy statement by the Commission that only an unequivocal "public commitment" not to change underlying service providers (a standard which is not satisfied by the mere mention of an underlying carrier in advertisements, promotions or telemarketing activities) should be the only circumstance which triggers an obligation to notify consumers of a change in underlying service providers.

### **III. CONCLUSION**

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to require consumers to pay for telecommunications services provided by a carrier which cannot adequately document a PC switch only to the extent of payments which would have been owed the authorized carrier for those same services, and to expand the Commission's existing verification rules to apply to all carriers, all telecommunications services and both PC changes and PC freezes. The Commission should also summarily reject the sanction/penalty proposals advanced by Ameritech, Southwestern Bell and U S West as violative of the due process rights of carriers and require the monitoring of carrier implementation of PC changes and freezes by an unaffiliated, independent PC Administrator. Finally, the Commission should adopt a bright-line which does not unduly hamper resale carriers in the pursuit of